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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,908	07/14/2003	Shane E. Weyant	DB001016-002	6851

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PITTSBURGH, PA 15219-1425

EXAMINER
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MAYO, TARA L

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/618,908

Applicant(s)

WEYANT ET AL.

Examiner

Tara L. Mayo

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>071403 and 112403</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 24 November 2003 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but some of the information referred to therein has not been considered. Specifically, foreign patent DE 3145153 A1 has not been considered by the Examiner.
2. The references to Berger '588 and Simpson et al. '610 have been lined through on the information disclosure statement filed 24 November 2003 because they are cited on the information disclosure statement filed 14 July 2003 and have been considered by the Examiner.

### ***Claim Objections***

3. Claim 30 is objected to because of the following informalities: inconsistent claim language. In claim 30 on line 1, change "thread portion" to --threaded portions--.  
Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 24 through 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Weatherby (U.S. Patent No. 4,124,983).

Weatherby '983, as seen in Figures 1 through 3, shows a tieback rod for use in bracing a retaining wall comprising:

with regard to claim 24,

a rod shaft having a first end and a second end; and

a portion of said tieback rod being a composite material;

with regard to claim 25,

wherein the tieback rod is of a unitary construction;

with regard to claim 26,

wherein said rod shaft further comprises a metallic material (20) encased within a composite material (21);

with regard to claim 27,

wherein said rod shaft is of a predetermined diameter and said first end is separated from said second end by a predetermined length; and

with regard to claim 28,

wherein said first end is operable to be secured to a tieback system anchor (24).

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With regard to Applicant's recitation of pultrusion in claims 24 and 26, the method of forming the tieback rod is not germane to the issue of patentability of the device itself.

Therefore, this limitation has not been given patentable weight.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weatherby (U.S. Patent No. 4,124,983) in view of Taylor et al. (U.S. Patent No. 6,024,516 A).

Weatherby '983 further discloses:

with regard to claim 29,

a tieback fastener (28).

Weatherby '983 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claim 29,

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the second end including a threaded portion operable to matingly engage threads of the tie back fastener; and

with regard to claim 30,

the threaded portion of the second end and the tieback fastener being contained within a channel of a retaining wall support member when the tieback fastener is matingly engaged with the threaded portion of the second end, wherein the retaining wall support member includes one of a cap channel and a wale.

Taylor et al. '516, as seen in Figures 16 through 18, show a tieback rod (30) for use in bracing a retaining wall (P3):

wherein an end of the tieback rod includes a threaded portion, the threaded portion operable to matingly engage threads of a tieback fastener (80), the fastener facilitating tensioning of the tieback rod (col. 4, lines 53 through 55); and

wherein the threaded portions of the end and the tieback fastener are contained within of a retaining wall support member (68) when the tieback fastener is matingly engaged with the threaded portion of the end, wherein the retaining wall support member is a wale.

With regard to claim 29, it would have been obvious to one of ordinary skill in the art of earth retention at the time of invention to modify the device shown by Weatherby '983 such that it would include the threaded arrangement as taught by Taylor et al. '516. The motivation would have been to facilitate tensioning of the tieback rod.

With regard to claim 30, it would have been obvious to one of ordinary skill in the art of earth retention at the time of invention to modify the device shown by Weatherby '983 such that the threaded arrangement would be contained within a wale channel as taught to be desirable by Taylor et al. '516. The motivation would have been to at least partially shield the threaded attachment of the tieback rod to the tieback fastener.

8. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weatherby (U.S. Patent No. 4,124,983) in view of Hall et al. (U.S. Patent No. 6,264,403 B1).

Weatherby '983 further discloses:

with regard to claim 31,

the metallic material being steel (col. 3, lines 23 through 26).

Weatherby '983 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claim 31,

the metallic material being one of galvanized steel and stainless steel.

Hall et al. '403, as seen in Figures 1, 2, and 9, disclose a composite pultruded pile (1; col. 4, lines 31 through 40) for anchor applications comprising a hollow stainless steel core (4) and a suitable filling material (col. 4, lines 1 through 4).

With regard to claim 31, it would have been obvious to one of ordinary skill in the art of earth retention at the time of invention to make the rod shaft of the device shown Weatherby '983 partly of stainless steel as taught by Hall et al. '403. The motivation would have been to use a steel material (1) having a high resistance to corrosion, (2) that can be easily fabricated, and (3) having a high strength to weight ratio to allow for reduced material costs.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



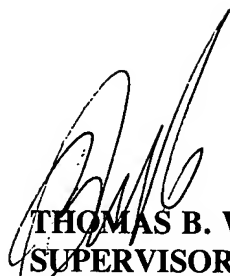
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TLM

17 February 2004



**THOMAS B. WILL**  
**SUPERVISORY PATENT EXAMINER**  
**GROUP 3600**